

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
	)	
	)	Cr. ID No. 93001218DI
	)	
BRUCE MASON,	)	
	)	
Defendant.	)	

Submitted: August 9, 2019  
Decided: November 25, 2019

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT  
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE DENIED.**

Lynn A. Kelly, Deputy Attorney General, Department of Justice, Wilmington,  
Delaware, Attorney for the State.

Zachary A. George, Esquire, Attorney for Defendant Bruce Mason.

PARKER, Commissioner

This 25th day of November 2019, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

**BACKGROUND, FACTS AND PROCEDURAL HISTORY**

1. In the subject action, Defendant Bruce Mason was facing five charges: one count of Kidnapping First Degree and four counts of Unlawful Sexual Intercourse First Degree.
2. The subject charges resulted from a sexual encounter occurring between Mason, who was nineteen at the time, and the thirteen-year-old complainant, R.R.,<sup>1</sup> on a summer evening in 1992.<sup>2</sup>
3. In the summer of 1992, R.R. was thirteen years old and living with her mother and stepfather.<sup>3</sup> She has just completed the 7<sup>th</sup> grade.<sup>4</sup> Mason worked with R.R.'s stepfather.
4. On the night of the assault, Mason drove R.R., and her nine-year-old stepbrother, L.R.,<sup>5</sup> over to his apartment under the pretense that the children could help him feed his dog. Mason also promised thirteen-year-old R.R. that she could drive the car on the way home from his house. Once inside Mason's apartment, R.R.

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<sup>1</sup> The victim will be referenced by only her initials.

<sup>2</sup> See, *State v. Mason*, Del.Super., ID No. 93001218DI-R1, \* 2, Barron, J. (April 11, 1996).

<sup>3</sup> June 21, 1994 Trial Transcript, at pg. 31.

<sup>4</sup> June 21, 1994 Trial Transcript, at pg. 31.

<sup>5</sup> The victim's step-brother will also be referenced using only his initials.

became leery of Mason and asked her step-brother not to leave her alone with Mason.<sup>6</sup>

5. Mason directed L.R. to play videogames in the living room while he lured R.R. into his bedroom under the guise of viewing photographs located there. L.R. tried to follow Mason and R.R. into the bedroom, but Mason shut and locked the bedroom door before L.R. could enter.<sup>7</sup>

6. At trial, R.R. testified that while locked in his bedroom, Mason kept attempting to enter her vaginally with his penis, and slightly penetrated her, but was too big. Mason then used his fingers and tongue to enter her. Mason also forced her to have anal sex. Mason asked R.R. to “suck his d\_\_\_” and told her that he would not let her leave the bedroom until she kissed his penis. Which she did.<sup>8</sup>

7. At Mason’s trial, L.R. testified, most convincingly, that he heard his sister crying as he stood outside the door trying to get inside the bedroom. Mason instructed L.R. to leave R.R. and him alone and to continue playing videogames. L.R. further testified that R.R.’s hair and clothing were disheveled and she was sniffing when she finally emerged from Mason’s bedroom.<sup>9</sup>

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<sup>6</sup> *State v. Mason*, Del.Super., ID No. 93001218DI-R1, \* 2, Barron, J. (April 11, 1996).

<sup>7</sup> *State v. Mason*, Del.Super., ID No. 93001218DI-R1, \* 2, Barron, J. (April 11, 1996); June 21, 1994 Trial Transcript, at pgs. 36-37.

<sup>8</sup> June 21, 1994 Trial Transcript, at pgs. 38-41.

<sup>9</sup> *State v. Mason*, Del.Super., ID No. 93001218DI-R1, \* 2-3 Barron, J. (April 11, 1996).

8. In the summer of 1992, Mason was nineteen-years old. Mason was 6 feet, 2 inches in height, and weighed 220 pounds.<sup>10</sup> R.R. was much shorter and weighed 115 pounds. R.R. was no comparison in strength to Mason.<sup>11</sup>

9. R.R. told no one of the incident except her boyfriend. Her boyfriend kept R.R.'s secret for several months but finally told R.R.'s mother in November of 1992, who in turn called the police.<sup>12</sup>

10. Mason admitted that he had taken R.R. to his home but claimed that he had not engaged in any sexual activity with R.R.<sup>13</sup>

11. Mason was charged as follows:

- \* one count of Kidnapping First Degree,
- \* one count of Unlawful Sexual Intercourse First Degree for penetrating her vagina with his penis;
- \* one count of Unlawful Sexual Intercourse First Degree for engaging in sexual intercourse by putting his mouth on her vagina;
- \* one count of Unlawful Sexual Intercourse First Degree for engaging in sexual intercourse by inserting his penis in her anus; and

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<sup>10</sup> June 22, 1994 Trial Transcript, at pg. 156, 196.

<sup>11</sup> June 21, 1994 Trial Transcript, at pgs. 32-33; June 22, 1994 Trial Transcript, at pgs. 196-197.

<sup>12</sup> *State v. Mason*, Del.Super., ID No. 93001218DI-R1, \* 2-3, Barron, J. (April 11, 1996).

<sup>13</sup> *State v. Mason*, Del.Super., ID No. 93001218DI-R1, \* 3 Barron, J. (April 11, 1996).

\* one count of Unlawful Sexual Intercourse First Degree for engaging in sexual intercourse by forcing her to put his penis in her mouth.

12. Following a four-day Superior Court jury trial, from June 21-June 24, 1994, the jury found Mason guilty of three of the four counts of Unlawful Sexual Intercourse in the First Degree. The jury found Mason guilty of Unlawful Sexual Intercourse in the First Degree on the counts for penetrating her vagina with his penis; putting his mouth on her vagina; and forcing her to put his penis in her mouth.<sup>14</sup>

13. Mason was found not guilty of Unlawful Sexual Intercourse First Degree on the count of inserting his penis in her anus. The jury could not reach a unanimous verdict on the kidnapping charge and the State *nolle prossed* that charge after the trial.<sup>15</sup>

14. The jury made a specific finding that the three unlawful sexual intercourse acts constituted separate offenses and not one continuous act.<sup>16</sup>

15. At the conclusion of the trial, Mason filed a Motion for Judgment of Acquittal and/or a New Trial. The Superior Court denied Mason's Motion on August 16, 2004.<sup>17</sup> The Superior Court noted that the central issue in this case was what

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<sup>14</sup> June 24, 1994 Trial Transcript, at pgs. 5-7.

<sup>15</sup> June 24, 1994 Trial Transcript, at pgs. 5-7.

<sup>16</sup> June 24, 1994 Trial Transcript, at pg. 6.

<sup>17</sup> *State v. Mason*, 1994 WL 1877137 (Del.Super.).

happened at Mason's apartment on that summer evening in 1992. The Superior Court noted that this was not simply a case of the victim's word against that of Mason. The victim's younger brother, L.R., was there. His testimony, "I heard [R.R.] crying. I tried to get in the door," after R.R. told him not to leave her alone with Mason, was compelling and extremely credible.<sup>18</sup>

16. The Superior Court further noted that also compelling and extremely credible was the testimony of Mason's friend, George English, who recounted that Mason had told him the victim had "sucked his d\_\_\_\_." Mr. English had not been a willing witness for the State. He carried no grudge against Mason. He was totally believable.<sup>19</sup>

17. The Superior Court denied Mason's motion for judgment of acquittal concluding that there was substantial evidence which corroborated the testimony of the complaining witness on material points. The strength of the State's case was substantial and compelling.<sup>20</sup>

18. In August 1994, Mason was sentenced. The minimum-mandatory sentence for each of the three convictions of unlawful sexual intercourse in the first degree was 15 years, for a total of 45 years. Mason was sentenced to 48 years at Level V

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<sup>18</sup> *State v. Mason*, 1994 WL 1877137, \*2 (Del.Super.).

<sup>19</sup> *State v. Mason*, 1994 WL 1877137, \*2 (Del.Super.); June 21, 1994 Trial Transcript, at pgs. 96-100, 115, 118; June 22, 1994 Trial Transcript, at pgs. 83-84, 93-94, 97-99, 104, 109-110.

<sup>20</sup> *State v. Mason*, 1994 WL 1877137, \*2 (Del.Super.).

incarceration, suspended after 45 years (the minimum-mandatory sentence for the three convictions), followed by probation.

19. The Delaware Supreme Court affirmed Mason's conviction and sentence on direct appeal.<sup>21</sup>

20. On January 4, 1996, while represented by counsel, Mason filed his first Rule 61 motion for postconviction relief. The Superior Court denied the motion on April 11, 1996.<sup>22</sup> The Delaware Supreme Court affirmed the denial of Mason's first postconviction relief motion on February 25, 1997.<sup>23</sup>

21. On February 24, 1998, Mason filed a second Rule 61 motion for postconviction relief. The Superior Court denied the motion on April 28, 1998.<sup>24</sup> On February 11, 1999, the Delaware Supreme Court affirmed the denial of Mason's second Rule 61 motion.<sup>25</sup>

22. On February 25, 2019, Mason filed a Rule 35 Motion for Modification/Reduction of Sentence. Mason raised the same three claims in that motion that he now raises in the subject Rule 61 motion.

23. On April 3, 2019, the Superior Court denied Mason's motion for sentence modification/reduction. The Superior Court concluded that extraordinary

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<sup>21</sup> *Mason v. State*, 658 A.2d 994 (1995).

<sup>22</sup> Superior Court Docket No. 50- *State v. Mason*, Del.Super., ID No. 93001218DI-R1, Barron, J. (April 11, 1996).

<sup>23</sup> *Mason v. State*, 1997 WL 90780 (Del.).

<sup>24</sup> *State v. Mason*, 1998 WL 449563 (Del.Super.).

<sup>25</sup> *Mason v. State*, 1999 WL 93283 (Del.).

circumstances did not exist that would warrant a reduction or modification of the sentence. The Superior Court held that the sentence was appropriate for all the reasons stated at the time of sentencing.<sup>26</sup>

### **Mason's Pending Rule 61 Motion**

24. On February 20, 2019, Mason, with the assistance of counsel, filed the subject Rule 61 motion, his third Rule 61 motion. In the subject motion Mason raises three claims: (1) the court lacked jurisdiction as a result of his ineffective waiver of his right to be indicted by a grand jury; (2) newly discovered exculpatory evidence exists; and (3) the sentence constitutes cruel and unusual punishment in violation of the Eight Amendment of the U.S. Constitution.

25. Under Rule 61, a second or subsequent motion for postconviction relief is not permitted unless the motion pleads with particularity the existence of new evidence that creates a strong inference of actual innocence or a new rule of constitutional law that is retroactively applicable that would render the conviction invalid,<sup>27</sup> or the motion asserts a claim that the court lacked jurisdiction.<sup>28</sup>

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<sup>26</sup>Superior Court Docket No. 77- April 3, 2019 Order denying Mason's Motion for Sentence Modification/Reduction.

<sup>27</sup> Super.Ct.Crim.R. 61(d)(2) & (5); and Rule 61(i).

<sup>28</sup> Super.Ct.Crim.R. 61(i)(5).



26. For the reasons discussed below, Mason's claims raised herein should be summarily dismissed because they fail to meet the pleading requirements for proceeding with the motion on its merits.

**Claim One- Alleged Defective Waiver of Indictment**

27. In the subject motion, Mason first claims that the court lacked jurisdiction as a result of his alleged ineffective waiver of his right to be indicted by the grand jury.

28. Superior Court Criminal Rule 7 permits a defendant to waive his indictment in writing. Mason waived his indictment in writing. Mason's waiver of his indictment was signed by Mason, his trial counsel, and a witness, and was filed with the Superior Court on December 8, 1993.<sup>29</sup>

29. Mason did not object to his waiver of indictment prior to trial, on direct appeal, or in a timely filed Rule 61 motion. In fact, Mason never objected to his waiver of indictment at any time during the intervening 25 years from the date of his trial in 1994 to the filing of this motion in 2019.

30. Under Superior Court Criminal Rule 12(b)(2) and 12(f), any objection based on a defective indictment or information is waived unless it is raised before the trial.<sup>30</sup> Mason waived any objection to his waiver of indictment when he failed to raise it before trial.

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<sup>29</sup> Mason's Waiver of Indictment filed December 8, 1993, Superior Court Docket No. 72, Appendix to Mason's Motion for Rule 61 Post-Conviction Relief at A-48.

<sup>30</sup> *Stewart v. State*, 2003 WL 22015766, \*1 (Del.).

31. Mason now claims that his waiver of indictment was not voluntary and that the waiver was required to have been made in open court. Superior Court Criminal Rule 7(b), however, permits a waiver of indictment to be made in writing *or* in open court. Mason's waiver was in writing. There was no requirement that it also be made in open court.

32. Having failed to raise this issue prior to trial in 1994, during trial, on direct appeal, in his first timely filed Rule 61 motion which was filed with the assistance of counsel, or at any time in the intervening 25 years, this claim does not meet the pleading requirements needed to overcome its summary dismissal. This claim does not raise anything new or recently discovered.

33. Moreover, in addition to failing to meet the pleading requirements, this claim is also time-barred for failing to raise it within one year of the final order of conviction.<sup>31</sup> The final order of conviction was in 1995, and this motion was filed in 2019, over 24 years later.

34. This claim is also procedurally barred by Rule 61(i)(3) for failing to raise this claim on direct appeal or in a timely filed Rule 61 motion. Mason had time to and the opportunity to raise this claim presented herein in a timely filed motion. This claim stems from facts known to Mason at the time of his trial in 1994. Mason does not raise anything new or recently discovered. There is no just reason for Mason's

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<sup>31</sup> Super.Ct.Crim.R. 61 (i)(1).

over 25-year delay in raising this claim. Having been provided with a full and fair opportunity to present this issue in a timely filed motion, any attempt to raise this claim at this late juncture is procedurally barred.

**Claim Two- Allegedly Newly Discovered Exculpatory Evidence**

35. Mason claims that there is newly discovered exculpatory evidence that overcomes the pleading requirement for proceeding with this motion. Mason's claim consists of two matters: 1) a recent statement provided by the victim; and 2) Mason recently learned that the victim was at the Rockford Center from June 19-23, 1994.

36. The recent statement provided by the victim is far from exculpatory.<sup>32</sup> The victim is now 39 years-old and is ready to forgive Mason. She believes Mason has served enough time for raping her.

37. In her statement, the victim states: "I know that [Mason] forced himself upon me and even attempted to penetrate both my vagina and anus. . . [but] due to his size he gave up after only 15-20 minutes."<sup>33</sup>

38. She also now claims that due to Mason's size there was no penetration.<sup>34</sup>

39. Mason was convicted of three counts of Unlawful Sexual Intercourse First Degree. Two of the three counts did not require penetration. The conviction

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<sup>32</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-55- A-58.

<sup>33</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-55- A-58.

<sup>34</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-55- A-58.

stemming from the placing of Mason's mouth on the victim's vagina and the count stemming from the placing of Mason's penis in the victim's mouth, did not require penetration.<sup>35</sup>

40. As to the third conviction, penetrating her vagina with his penis, in the victim's statement to the police on November 19, 1992, she told the police that Mason kept trying to insert his penis in to her vagina but it would not go in. When questioned whether he got in "just a little", the victim explained that "he got it part of the way in and I kept pulling away from him and he kept forcing it in and forcing it, and forcing it, and I kept on pushing and pushing away."<sup>36</sup>

41. At trial, the victim testified that Mason put his penis in her vagina a little bit but could not get it to go in any further because he was too big.<sup>37</sup>

42. In the victim's recent statement, 26 years after Mason raped her, she continues to claim that Mason locked her in a room and for 15-20 minutes tried to penetrate her vaginally and anally, but was too big to do so. Despite her recent layperson assertion that there was no penetration, it is clear that Mason penetrated the victim to the extent that he was physically able to do so. The lack of any significant penetration was due to his size not to his lack of effort to penetrate her.

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<sup>35</sup> June 23, 1994 Trial Transcript, at pgs. 19-22.

<sup>36</sup> See, November 19, 1992 Recorded Statement of R.R. at pgs. 6-8.

<sup>37</sup> June 21, 1994 Trial Transcript, at pgs. 38-41.

43. Mason must pled with particularity the existence of new evidence that creates a strong inference of actual innocence in order to overcome the pleading barrier for proceeding with this claim.

44. The victim's recent statement is far from exculpatory, and certainly does not create a strong inference of actual innocence.

45. One final comment about the victim's statement, the victim states that she does not think that Mason's attempts at anal penetration should "count."<sup>38</sup> It is noted that Mason was not convicted of the unlawful sexual intercourse count charging him with anal penetration.

46. In the subject motion, Mason claims that this case amounted to a "he said/she said" conflict. That is not accurate. As the Superior Court recognized in its decision on Mason's motion for judgment of acquittal, this case was not simply a case of the victim's word against that of Mason.<sup>39</sup> The victim's younger brother was there and his testimony was compelling and extremely credible. The testimony of Mason's friend, George English, who had not been a willing witness for the State and carried no grudge against Mason, was also totally believable. The Superior Court recognized that there was substantial evidence that corroborated the testimony of the victim on

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<sup>38</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-55- A-58.

<sup>39</sup> *State v. Mason*, 1994 WL 1877137, \*2 (Del.Super.).

material points. The Superior Court recognized that the strength of the State's case was substantial and compelling.<sup>40</sup>

47. Turning next to Mason's second claim of newly discovered exculpatory evidence. Mason contends that he just recently became aware that the victim was at the Rockford Center from June 19-23, 1994.

48. The trial in this case was held from June 21-24, 1994. The incident at issue occurred in the summer of 1992, about two years prior to the trial. At the time of the incident in the summer of 1992, the victim was living with her mother and stepfather. At trial, the victim testified that she no longer lived with her mother and stepfather. She testified that she did not live anywhere and that her living situation was in transition.<sup>41</sup>

49. At some point after the incident in the summer of 1992, the victim apparently moved out of her mother's residence and appears to have moved around living with relatives and on the streets.<sup>42</sup> The victim went on the street because she felt she was a burden to people.<sup>43</sup>

50. As the trial was about to start, the victim was admitted to the Rockford Center. She was admitted on June 19, 2004, testified at trial on June 21, 2004, and was

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<sup>40</sup> *State v. Mason*, 1994 WL 1877137, \*2 (Del.Super.).

<sup>41</sup> June 21, 1994 Trial Transcript, at pgs. 67, 78.

<sup>42</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-55- A-58.

<sup>43</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-52- A-54.

discharged on June 23, 2004. The discharge summary states that she was admitted due to suicidal ideations and an unstable living situation.

51. During her admission, she advised the Rockford Center that her stepfather's best friend raped her "a few years ago" and that she had to attend a rape trial and was frightened by the trial. After she testified at Mason's trial on June 21, 2004, she returned to the Rockford Center and advised that she had testified at the rape trial. She was discharged two days later.<sup>44</sup>

52. In order to overcome the pleading requirement, Mason must establish that this newly discovered evidence creates a strong inference of his actual innocence. Mason has failed to meet his pleading requirement in this regard.

53. The victim told the Rockford Center that she had been raped by Mason and that she was frightened about testifying at his trial. She left the Rockford Center on June 21, 1994 to testify at Mason's trial and then returned and was discharged on June 23, 1994. This is hardly exculpatory. At the time of the trial, it appears her living situation was in transition and she was, at times, living on the streets. The fact that she was housed in a stable environment for a few days during the trial so that she could be located and available to testify at trial falls far short of creating a strong inference of Mason's actual innocence.

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<sup>44</sup> Superior Court Docket No. 72- Appendix to Mason's Rule 61 motion, at pg. A-52- A-54.

54. In the discharge summary, the victim stated that her chief complaint was “guys.” Mason claims that the victim’s statement that “guys” were her chief complaint is somehow exculpatory. First, the victim was admitted to the Rockford Center two years after Mason sexually assaulted her. Her relationships with “guys” in the intervening two years between the sexual assault and trial is, at best, marginally relevant. Moreover, whatever issues she was experiencing two years later may have resulted from Mason having sexually assaulted her.

55. The fact that two years after Mason’s sexual assault on the victim, she may or may not have suffered suicidal ideations, felt unwanted, was living on the streets, and may have been unable to engage in healthy relationships with “guys”, are far afield from the central trial issue: What happened at Mason’s apartment on that summer evening in 1992.

56. Mason has not established that the fact that the victim was admitted to the Rockford Center at the time of trial is exculpatory in any regard. More importantly, Mason has fallen far short of his burden to establish a strong inference of actual innocence from that admission.

### **Claim Three- Sentence Allegedly Amounts to Cruel and Unusual Punishment**

57. Mason’s third claim is that the sentence amounts to cruel and unusual punishment. Mason contends that the convictions “appear to have been one single episode versus three (3) separate crimes for which he was sentenced,” and that if he



was sentenced today, the sentences would run concurrently rather than consecutively.

58. First, the jury was specifically instructed to determine whether the offenses constituted one continuous act or separate and distinct offenses.<sup>45</sup> The jury found that the three counts of unlawful sexual intercourse in the first degree for which Mason was convicted constituted separate offenses and not one continuous act.<sup>46</sup>

59. Mason was sentenced to a total of 48 years at Level V, to be suspended after 45 years (15 year minimum-mandatory sentence for each of the three convictions).

60. In 1998, the crime of Unlawful Sexual Intercourse First Degree was reclassified as Rape First Degree.<sup>47</sup>

61. Mason contends that had he been sentenced after the passing of House Bill 312 by the General Assembly in 2014, he would have been eligible for concurrent sentences pursuant to 11 *Del. C.* §3901(d). Mason is incorrect in this regard.

62. House Bill 312 specifically excluded convictions for Rape First Degree (the equivalent of Unlawful Sexual Intercourse First Degree) and, for that matter, Rape Second Degree, to be eligible for concurrent sentences.<sup>48</sup>

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<sup>45</sup> July 23, 1994 Trial Transcript, at pgs. 19-23, 81.

<sup>46</sup> June 24, 1994 Trial Transcript, at pg. 6.

<sup>47</sup> See, 71 Del.Laws, c. 285, §§11-13; 11 *Del.C.* §773.

<sup>48</sup> H.B. 312, 147 General Assembly (2014).

63. Convictions for Rape in the First Degree, the equivalent of Unlawful Sexual Intercourse First Degree, was always excluded, and remains excluded, for concurrent sentencing with any other sentence of confinement.<sup>49</sup>

64. Mason raised this same claim, that his sentence was unduly harsh, in his Rule 35 motion seeking a sentence modification/reduction. On April 3, 2019, the Superior Court denied that motion. The Superior Court held that it does not have the authority to reduce or suspend any part of the mandatory portion of any substantive minimum sentence. Here, the 45-year sentence imposed is mandatory and cannot be reduced or suspended.<sup>50</sup>

65. Mason has not satisfied the pleading requirements for proceeding with this claim. He has not raised anything new or recently discovered. This claim is also procedurally barred for having been previously adjudicated.<sup>51</sup>

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<sup>49</sup>See, 11 *Del.C.* § 3901(d).

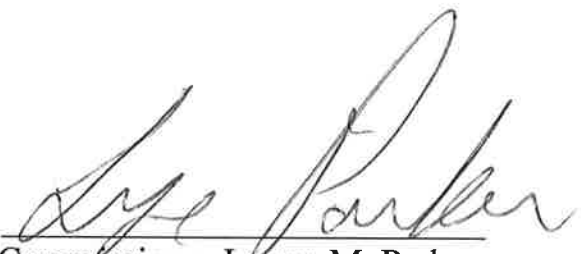
<sup>50</sup> Superior Court Docket No. 77- April 3, 2019 Order denying Mason's Motion for Sentence Modification/Reduction.

<sup>51</sup> Super.Ct.Crim.R. 61(i)(4).

66. In this motion, Mason has not raised any claim that overcomes the pleading requirements allowing him to proceed with this Rule 61 motion. Mason has not provided *new* evidence creating a strong inference that he is actual innocent. In accordance with the mandates of Rule 61, Mason's Rule 61 motion should be summarily dismissed.<sup>52</sup>

For all of the foregoing reasons, Mason's Motion for Postconviction Relief should be DENIED.

**IT IS SO RECOMMENDED.**

  
Commissioner Lynne M. Parker

cc: Prothonotary

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<sup>52</sup> Super.Ct.Crim.R. 61(d)(2) & (5); and Rule 61(i).